



other than an independent contractor retained by Spirit to perform consulting services. The deposition testimony cited by Plaintiffs—at 33:6–10, 37:14–38:4, and 39:15–40:16—provides no grounds for concluding that Campbell Hill acted as an agent rather than a third party providing services for a fee to Spirit. Indeed, the deposition record shows that Campbell Hill provided various types of consulting services that third party firms provide to clients in a contractual rather than agency relationship. A conclusion that Campbell Hill acted as Spirit’s agent—rather than as a contracted service provider—requires more. See, e.g., *Ruggiero v. Am. United Life Ins. Co.*, 137 F. Supp. 3d 104, 113 (D. Mass. 2015) (finding lack of agency relationship where insurance agent worked largely independently and was customarily engaged in independent business, because “the crux of the inquiry is in the actual relationship between the parties, and whether the plaintiff performs his work in fact ‘with minimal instruction.’”) (citation omitted). Those are exactly the facts here: Campbell Hill, which serves many different clients (*see* Healy 6/29/2023 Dep. at 21:16–22:14), worked with “minimal instruction” after being given discrete consulting assignments by Spirit as an independent company.

Plaintiffs have made no showing that Campbell Hill comes within the scope of Rule 801(d)(2)(D). To qualify as a party admission, the statement sought to be admitted must be made by a party’s agent or employee. Absent a factual predicate for showing that Campbell Hill was acting as Spirit’s agent, rather than a third party contracted to provide services, there is no basis for expanding the scope of the rule to sweep in documents such as Exhibits AW, AX and AY. Indeed, federal district courts routinely distinguish between independent contractors and agents for hearsay purposes. See, e.g., *Merrick v. Farmers Ins. Grp.*, 892 F.2d 1434, 1440 (9th Cir. 1990); *Lippay v. Christos*, 996 F.2d 1490, 1499 (3d Cir. 1993) (informant was not narcotics officer’s agent for party-admission purposes even where officer directly supervised

certain aspects of informant's work); *Horton v. Rockwell Int'l Corp.*, 93 F. Supp. 2d 1048, 1055 (N.D. Iowa 2000) (finding independent contractor as opposed to agency relationship despite "longstanding relationship" where contractors served many different companies); *United States v. Bonds*, 608 F.3d 495, 505 (9th Cir. 2010) (holding that evidence of an independent contractor relationship is not enough in itself to establish an agency relationship for party-admission purposes); *G.C. by Cosco v. The Sch. Bd. of Seminole Cnty., Fla.*, No. 6:07-cv-808-Orl-28GJK, 2009 WL 10706043, at \*2 (M.D. Fla. June 3, 2009); *see also* Fed. R. Evid. 801 Advisory Comm. Notes at (2)(D) (explaining that "[t]he tradition has been to test the admissibility of statements by agents, as admissions, by applying the usual test of agency").

The cases cited by Plaintiffs do not compel this Court to find otherwise. The only case that even comes close to this one—the district court's decision in *Integrated Communications*—was decided on summary judgment with all reasonable inferences drawn in favor of the proponent and involved the statement of a wholly owned subsidiary, where there was admissible evidence that the subsidiary was expressly acting "on behalf of" the parent entity. *Integrated Commc'ns & Techs., Inc. v. Hewlett-Packard Fin. Servs. Co.*, 478 F. Supp. 3d 126, 137 (D. Mass. 2020). That is nowhere near the case here, where Campbell Hill, far from being a subsidiary, was a consulting firm performing discrete projects at Spirit's request while also serving many other businesses besides Spirit.

For the foregoing reasons, Plaintiffs' motion should be denied.

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Respectfully submitted,

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**CERTIFICATE OF SERVICE**

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DATED this 21st day of November, 2023.

/s/ Samuel N. Rudman

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